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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte DENNIS SUNGA FERNANDEZ*

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Appeal 2007-4384  
Application 09/435,504  
Technology Center 3600

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Decided: March 5, 2008

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19Before ERIC GRIMES, ANTON W. FETTING, and JOSEPH A. FISCHETTI,  
20Administrative Patent Judges.21FETTING, *Administrative Patent Judge*.

## DECISION ON APPEAL

## STATEMENT OF CASE

24 Dennis Sunga Fernandez (Appellant) seeks review under 35 U.S.C. § 134 of a  
25final rejection of claims 1-12 and 21-28, the only claims pending in the application  
26on appeal.

27 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

29 We REVERSE and ENTER A NEW GROUND UNDER 37 C.F.R. § 41.50(b).

1     The Appellant invented a way to enable secure bioinformatics based  
2 transactions, in which on-line service is provided according to a voluntarily  
3 submitted genetic profile (Specification 3:3-9).

4     An understanding of the invention can be derived from a reading of exemplary  
5 claim 1, which is reproduced below [bracketed matter and some paragraphing  
6 added].

7       1. Automated transaction method comprising the steps of:  
8           [1] determining electronically  
9                a bioinformatic value associated with a user; and  
10          [2] transacting via a processor with the user according to the  
11            bioinformatic value,  
12                wherein the bioinformatic value is automatically determined  
13                when or after the user permits access to a voluntarily-  
14                selected portion of his or her personal genetic nucleotide  
15                profile,  
16                such accessible portion being  
17                associated or  
18                used with  
19                evaluating the user transaction via said  
20                processor,  
21                an other portion of such genetic profile being not  
22                voluntarily-selected by the user and thereby inaccessible  
23                for evaluating the user transaction.

24  
25     This appeal arises from the Examiner's Final Rejection, mailed March 14,  
26 2003. The Appellant filed an Appeal Brief in support of the appeal on June 19,  
27 2003. An Examiner's Answer to the Appeal Brief was mailed on March 9, 2004.  
28 A Reply Brief was filed on May 10, 2004.

## 1 PRIOR ART

2 The Examiner relies upon the following prior art:

Beecham	US 5,876,926	Mar. 2, 1999
O'Flaherty	US 6,275,824 B1	Aug. 14, 2001
Hoffman	US 6,366,682 B1	Apr. 2, 2002
Rigault	US 6,389,428 B1	May 14, 2002

3 We also discuss the following art in this Decision:

Holden US 6,640,211 B1 Oct. 28, 2003

4 Asch, "Genetic Tests: Evolving Policy Questions," IEEE Technology and  
5 Science Magazine, Winter 1996/1997, pp. 4-10 (1996).

## 6 REJECTIONS

7 Claims 1, 5, 7, 8, 11, 12, 21-25, and 27 stand rejected under 35 U.S.C. § 103(a)  
8 as unpatentable over Hoffman and O'Flaherty.

9 Claims 2-4, 6, 9, 10, and 28 stand rejected under 35 U.S.C. § 103(a) as  
10 unpatentable over Hoffman, O'Flaherty, and Beecham.

11 Claim 26 stands rejected under 35 U.S.C. § 103(a) as unpatentable over  
12 Hoffman, O'Flaherty, Beecham, and Rigault.

## ISSUES

2 The issues pertinent to this appeal are

- 3 • Whether the Appellant has sustained its burden of showing that the  
4 Examiner erred in rejecting claims 1, 5, 7, 8, 11, 12, 21-25, and 27 under  
5 35 U.S.C. § 103(a) as unpatentable over Hoffman and O'Flaherty.
- 6 • Whether the Appellant has sustained its burden of showing that the  
7 Examiner erred in rejecting claims 2-4, 6, 9, 10, and 28 under 35 U.S.C.  
8 § 103(a) as unpatentable over Hoffman, O'Flaherty, and Beecham.
- 9 • Whether the Appellant has sustained its burden of showing that the  
10 Examiner erred in rejecting claim 26 under 35 U.S.C. § 103(a) as  
11 unpatentable over Hoffman, O'Flaherty, Beecham, and Rigault.

12 The pertinent issue turns on whether it would have been obvious to use a  
13 personal genetic nucleotide profile as bioinformatics data in Hoffman.

1                   FACTS PERTINENT TO THE ISSUES

2     The following enumerated Findings of Fact (FF) are believed to be supported  
3 by a preponderance of the evidence.

4     *Facts Related to Claim Construction*

5       1. The disclosure contains no lexicographic definition of “transaction.”  
6       2. The ordinary and customary meaning of “transaction” is the act of  
7           transacting, i.e. conducting business.<sup>1</sup>

8     *Hoffman*

9       3. Hoffman is directed to tokenless (i.e. without the use of a physical  
10          object, such as a credit card) authorization of commercial transactions  
11          between a buyer and a seller using a computer system. The buyer  
12          registers with the computer system a PIN, at least one registration  
13          biometric sample, and at least one buyer financial account. In a proposal  
14          step, a seller offers a proposed commercial transaction to the buyer. If  
15          the buyer accepts the seller's proposal, in an acceptance step, the buyer  
16          signals his/her acceptance by adding to the proposed commercial  
17          transaction the buyer's personal authentication information comprising a  
18          PIN and at least one bid biometric sample which is obtained from the  
19          buyer's person (Hoffman 4:18-33).

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10<sup>1</sup> *American Heritage Dictionary of the English Language* (4<sup>th</sup> ed. 2000).

1           4. Hoffman accepts biometric data electronically with a scanner. The  
2         biometric scanner can be any one of fingerprint scanner, voice input  
3         device (microphone), palm print scanner, retinal scanner or the like  
4         (Hoffman 9:27-34).

5           5. Hoffman's biometric sample and PIN form personal authentication  
6         information in its transaction message (Hoffman 21:12-15).

7         *O'Flaherty*

8           6. O'Flaherty is directed to a database management system wherein the  
9         data in the database tables is controllably accessible according to privacy  
10       parameters stored in the database table. O'Flaherty stores privacy  
11       parameters collectively in database columns, and provides access to the  
12       data in the database table to a requesting entity solely in accordance with  
13       the personal privacy parameters (O'Flaherty 2:57 – 3:11).

14           7. O'Flaherty masks data that is unauthorized (O'Flaherty 8:16-24).

15         *Facts Related To The Level Of Skill In The Art*

16           8. Neither the Examiner nor the Appellant has addressed the level of  
17         ordinary skill in the pertinent arts of tracking items and data formatting.  
18         We will therefore consider the cited prior art as representative of the  
19         level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d  
20         1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the  
21         level of skill in the art does not give rise to reversible error ‘where the  
22         prior art itself reflects an appropriate level and a need for testimony is  
23         not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*,  
24         755 F.2d 158, 163 (Fed. Cir. 1985).

1

## PRINCIPLES OF LAW

*2Claim Construction*

3 During examination of a patent application, pending claims are given  
4 their broadest reasonable construction consistent with the specification. *In*  
5 *re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci.*  
6 *Tech Ctr.*, 367 F.3d 1359, 1364, (Fed. Cir. 2004).

7 Limitations appearing in the specification but not recited in the claim are not  
8 read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed.  
9 Cir. 2003) (claims must be interpreted “in view of the specification” without  
10 importing limitations from the specification into the claims unnecessarily).

11 Although a patent applicant is entitled to be his or her own lexicographer of  
12 patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*,  
13 347 F.2d 578, 580 (CCPA 1965). The applicant must do so by placing such  
14 definitions in the Specification with sufficient clarity to provide a person of  
15 ordinary skill in the art with clear and precise notice of the meaning that is to be  
16 construed. *See also In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (although  
17 an inventor is free to define the specific terms used to describe the invention, this  
18 must be done with reasonable clarity, deliberateness, and precision; where an  
19 inventor chooses to give terms uncommon meanings, the inventor must set out any  
20 uncommon definition in some manner within the patent disclosure so as to give  
21 one of ordinary skill in the art notice of the change).

22 *Obviousness*

23 A claimed invention is unpatentable if the differences between it and the  
24 prior art are “such that the subject matter as a whole would have been obvious at  
25 the time the invention was made to a person having ordinary skill in the art.”

135 U.S.C. § 103(a) (2000); *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727 (2007);

2*Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

3        In *Graham*, the Court held that the obviousness analysis is bottomed on  
4several basic factual inquiries: “[1] the scope and content of the prior art are to be  
5determined; [(2)] differences between the prior art and the claims at issue are to be  
6ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved.” 383  
7U.S. at 17. *See also KSR Int'l v. Teleflex Inc.*, 127 S.Ct. at 1734. “The  
8combination of familiar elements according to known methods is likely to be  
9obvious when it does no more than yield predictable results.” *KSR*, 127 S.Ct. at  
101739.

11        “When a work is available in one field of endeavor, design incentives and  
12other market forces can prompt variations of it, either in the same field or in a  
13different one. If a person of ordinary skill in the art can implement a predictable  
14variation, § 103 likely bars its patentability.” *Id.* at 1740.

15        “For the same reason, if a technique has been used to improve one device,  
16and a person of ordinary skill in the art would recognize that it would improve  
17similar devices in the same way, using the technique is obvious unless its actual  
18application is beyond his or her skill.” *Id.*

19        “Under the correct analysis, any need or problem known in the field of  
20endeavor at the time of invention and addressed by the patent can provide a reason  
21for combining the elements in the manner claimed.” *Id.* at 1742.

## 1 ANALYSIS

2     *Claims 1, 5, 7, 8, 11, 12, 21-25, and 27 rejected under 35 U.S.C. § 103(a) as  
3                         unpatentable over Hoffman and O'Flaherty.*

4     The Appellant argue these claims as a group.

5     Accordingly, we select claim 1 as representative of the group.

637 C.F.R. § 41.37(e)(1)(vii) (2007).

7     The Examiner found that Hoffman described all the limitations of claim 1  
8except for a personal genetic nucleotide profile and having a selectable portion be  
9voluntarily accessible and another portion inaccessible. The Examiner found that a  
10nucleotide profile was simply a long PIN (personal identification number) and that  
11O'Flaherty described a system allowing a user to selectively make portions of data  
12accessible. (Answer 4-5).

13    The Appellant contends that Hoffman provides no suggestion for using a  
14personal genetic nucleotide profile (Br. 9) and further, that in the absence of such a  
15suggestion, there would be no reason to apply O'Flaherty (Br. 12).

16    The Examiner responded by taking official notice that a personal genetic  
17nucleotide profile is biometric data and Hoffman accesses biometric data (Answer  
1821:Top ¶). The Examiner cites several additional references as evidence that a  
19nucleotide profile may be biometric data in support. The Appellant in turn  
20responds that these references are not of record and more critically, do not suggest  
21the use of such nucleotide data for transactions (Reply Br. 2:First and second full  
22¶'s).

23    We agree. While the Examiner is correct that Hoffman accepts bioinformatic  
24data for transactions (FF ), Hoffman relies upon a scanner that measures  
25observable physical characteristics, such as fingerprints, voice prints, palm prints,

1and retinal patterns (FF ). While it is undoubtedly true that a personal genetic  
2nucleotide profile is biometric data, this alone is insufficient to find that Hoffman  
3would have used such a profile, since a scanner as described by Hoffman could not  
4obtain a genetic nucleotide profile.

5 This is hardly surprising, because Hoffman is clearly directed to authentication  
6of a user, not analyzing a user's genetic DNA. Hoffman uses its biometric sample  
7and PIN to form personal authentication information in its transaction message (FF  
8). Thus, Hoffman acquires biometric information that identifies who is actually at  
9the scanning device to ensure that person is properly authenticated. Claim 1 recites  
10the limitation of relying on a nucleotide profile to complete a transaction. There is  
11no requirement that the profile be from a person presently at an input device, nor  
12any requirement for authenticating that the profile actually is the user's, although  
13the claim requires that the profile actually be the user's. There is simply no way  
14for Hoffman's scanner to produce such a profile, and such a profile would be  
15useless to Hoffman's authentication mechanism. Thus, we find the Examiner erred  
16in rejecting claim 1 over Hoffman and O'Flaherty. Since independent claim 27  
17and the remaining dependent claims incorporate this limitation of a personal  
18genetic nucleotide profile, we find the Examiner has similarly erred in rejecting  
19those claims.

20 The Appellant has sustained its burden of showing that the Examiner erred in  
21rejecting claims 1, 5, 7, 8, 11, 12, 21-25, and 27 under 35 U.S.C. § 103(a) as  
22unpatentable over Hoffman and O'Flaherty.

<sup>1</sup> Claims 2-4, 6, 9, 10, and 28 rejected under 35 U.S.C. § 103(a) as unpatentable over Hoffman, O'Flaherty, and Beecham.

3 These claims similarly incorporate the limitation of a personal genetic  
4 nucleotide profile, and we find the Examiner has erred in rejecting these claims for  
5 the same reasons we cited, *supra*.

6 The Appellant has sustained its burden of showing that the Examiner erred in  
7rejecting claims 2-4, 6, 9, 10, and 28 under 35 U.S.C. § 103(a) as unpatentable  
8over Hoffman, O'Flaherty, and Beecham.

11 This claim similarly incorporates the limitation of a personal genetic nucleotide  
12 profile, and we find the Examiner has erred in rejecting this claim for the same  
13 reasons we cited, *supra*.

14 The Appellant has sustained its burden of showing that the Examiner erred in  
15rejecting claim 26 under 35 U.S.C. § 103(a) as unpatentable over Hoffman,  
16O'Flaherty, Beecham, and Rigault.

## CONCLUSIONS OF LAW

18 The Appellant has sustained its burden of showing that the Examiner erred in  
19 rejecting claims 1-12 and 21-28 under 35 U.S.C. § 103(a) as unpatentable over the  
20 cited prior art.

## 1                    NEW GROUND OF REJECTION

2     The following new grounds of rejection are entered pursuant to  
337 C.F.R. § 41.50(b).

4     Independent claims 1, 27, and 28 are rejected under 35 U.S.C. § 102(e) as  
5 anticipated by Holden. Dependent claims 10-12, 21, and 23-26 are rejected under  
6 35 U.S.C. § 103(a) as unpatentable over Holden. Claims 2-4, 6-9, and 22 are  
7 rejected under 35 U.S.C. § 103(a) as unpatentable over Holden and Asch. Claim 5  
8 is rejected under 35 U.S.C. § 103(a) as unpatentable over Holden and O'Flaherty.

## 9                    ADDITIONAL FACTS PERTINENT TO THE ISSUES

10    The following additional enumerated Findings of Fact (FF) are believed to be  
11 supported by a preponderance of the evidence.

12    *Holden*

13    9. Holden is directed to storing and accessing genetic information and  
14       providing protection against unauthorized access and use, but providing  
15       convenience in accessing and using genetic information if such use is  
16       properly authorized (Holden 1:23-27).

17    10. Holden's patient enrolls in a genetic banking system for multiple  
18       patients and provides a source of genetic material, such as a blood  
19       sample. The sample is processed to produce a genetic profile for the  
20       patient. The processed data is stored in a database to create a genetic  
21       profile for that patient (Holden 1:28-35).

22    11. The patient, either at the time of enrollment or after a sample is  
23       processed, can dictate access rights, including the ability of third parties  
24       (other than the individual or the genetic bank itself), such as medical

1 practitioners, to access this profile, and the specific purposes for which  
2 the profile can be accessed and used. Thus, the patient can specify both  
3 the people who will have access, and the uses for which they have access  
4 (Holden 1:36-43).

5 12.A medical practitioner authorized to have access by the patient and  
6 confirmed by the access control system can access the profile and  
7 perform a transaction such as running tests based on the profile (Holden  
8 1:49-54).

9 13.Holden's system allows users to store a comprehensive digitized DNA  
10 profile based on a sample. The patient has control to voluntarily allow  
11 access to particular people and for particular purposes, thus protecting  
12 the privacy of that information (Holden 1:63-67).

13 14.Holden's system may include data integration and analysis  
14 functionalities (Holden 2:19-21).

15 15.Holden describes the use of a server in a separate system for data access  
16 (Holden 2:39-48).

17 16.Some of Holden's authorized third parties may have access for some  
18 purposes and not for other purposes (Holden 2:60-65).

19 17.Holden derives its profiles by the genetic banking and testing services  
20 that are provided, and can include genotyping and bioinformatic  
21 profiling of general and/or specific genetic marker panels. Such  
22 information can be used to determine risks of many diseases including,  
23 without limitation, cancer, Huntington's Disease, Alzheimer's Disease,  
24 and hypertension. The data that is provided from these tests is digitally

1 stored in the database as a genetic profile of the patient for subsequent  
2 analysis and tests (Holden 3:31-47).

3 18.If access is allowed, Holden's practitioner can seek to have a test  
4 performed, such as a search of the profile for markers for Huntington's  
5 Disease. The system determines whether the test is authorized by  
6 comparing the type of test that is desired with the access rights entered  
7 by the patient (a practitioner may have access for some purposes but not  
8 others). If the test is authorized, the processing system forwards the  
9 request to the testing system to perform the test (Holden 3:66 – 4:6).

10 19.Holden's system allows a patient to voluntarily bank genetic information  
11 that can be used quickly to determine genetic and medical information  
12 about that individual, particularly information that relates to whether the  
13 individual carries genetic information associated with known diseases.  
14 The system provides restrictions, however, that allow the user to retain  
15 privacy and limit unauthorized access to his/her genetic information.  
16 The system is thus unlike a system, for example, in which DNA  
17 information, like fingerprint information, is stored for identification  
18 purposes to use DNA information to identify individuals involved in  
19 specific criminal activities; in such a case, the individual who provides  
20 the sample would generally not have voluntary control to establish the  
21 ability of others to access the information, and such systems would  
22 generally not have the ability to test for a number of different medical  
23 purposes for which the DNA information can be accessed by others  
24 (Holden 5:62 – 6:12).

*1 Asch*

2 20. Asch is directed to exploring policy questions surrounding genetic  
3 testing (Asch 4:Title).

4 21. A 1991 survey of insurers found that most health insurers believe it is  
5 fair for insurers to use genetic tests to identify individuals with increased  
6 risk of disease, and that they should have the option of determining how  
7 to use genetic information in determining risks. One reason insurers  
8 might use such tests is that individuals can undergo genetic testing on  
9 their own, and if they discover that they are at greater medical risk they  
10 might purchase more insurance. This phenomenon, known as adverse  
11 selection, puts insurance companies at a disadvantage if they lack access  
12 to the same information. To level the playing field, insurance companies  
13 might have a legitimate interest in the results of genetic tests already  
14 performed, and might have an incentive to initiate testing for selected  
15 conditions. When one insurer begins to use genetic information in its  
16 risk rating, others must follow or they will disproportionately attract  
17 individuals who are denied coverage elsewhere. This suggests that  
18 insurance companies will inevitably begin to use genetic information in  
19 risk rating, despite the expense and complexities involved. Some  
20 analysts have argued that this inexorable trend contradicts the rationale  
21 for insurance in the first place (Asch 9:Left col. Third full ¶ - Right col.  
22 First full ¶).

## ANALYSIS

2 The anticipation of claims 1, 27, and 28 by Holden is demonstrated in the  
 3 following chart.

<u>Claim 1</u>	<u>Holden</u>
1. Automated transaction method comprising the steps of:	
[1] determining electronically a bioinformatic value associated with a user; and	Running tests based on the stored profile (Holden 1:49-54)
[2] transacting via a processor with the user according to the bioinformatic value, wherein the bioinformatic value is automatically determined when or after the user permits access to a voluntarily-selected portion of his or her personal genetic nucleotide profile,	Same as above - basing on profile shows the determination, running tests shows the transaction
such accessible portion being associated or used with evaluating the user transaction via said processor, an other portion of such genetic profile being not voluntarily-selected by the user and thereby inaccessible for evaluating the user transaction.	Patient voluntarily allows access for particular people and purposes (Holden 1:63-67) -- genotyping and bioinformatic profiling of genetic marker panel (Holden 3:34-39); nucleotide polymorphism map (Holden 4:38-42)
The party processing the transaction being a caregiver (Claim 28)	Running tests based on the stored profile (Holden 1:49-54)
	A practitioner may access for some purposes but not others (Holden 4:1-5)
	The party is a medical practitioner (Holden 1:36-43)

4 All of the limitations of claims 27 and 28 form a subset of the limitations of  
 5 claim 1, except the claim 28 limitation of a caregiver, which is also included in the  
 6 chart.

1 As to claims 10-12, 21, and 23-26, rejected as obvious over Holden, we find as  
2 follows.

3 • Holden describes a server for storing data and remote transactions (FF )  
4 (claim 10).

5 • A portable computer is a predictable variation of Holden's computer and  
6 patient control over data implies a patient identification, which is sufficient  
7 to create a patient account (claim 12).

8 • Holden describes multiple patients (FF ) (claim 11).

9 • Holden describes a remote system (FF ), which implies origination and  
10 transmission of a data as a signal (claims 21 and 25).

11 • Holden describes data analysis functionality (FF ). Analysis testing for data  
12 that is clearly incorrect (claim 23) or comparing differences between similar  
13 data (claim 24) are known by those in the art of data analysis to be  
14 predictable variations of data analysis in general, and indeed are frequently  
15 considered "sanity check" type testing to determine anomalies. The  
16 combination of familiar elements according to known methods is likely to be  
17 obvious when it does no more than yield predictable results. *KSR*, 127 S. Ct.  
18 at 1739.

19 • The DNA profiles of Holden clearly have correspondence with at least a  
20 single nucleotide polymorphism (claim 26).

1 As to claims 2-4, 6-9, and 22, rejected over Holden and Asch, we find as  
2 follows.

3 • Asch describes the use of genetic profile information as requisites for  
4 insurance policies (FF ). Claim 2 requires such an insurance policy, and  
5 claims 3 and 4 require a service contract or bid to serve, each of which a  
6 health insurance policy would represent.

7 • Asch describes the lack of precision in predicting actual circumstances,  
8 implying the actuarial table of claim 6, and the applicability to group  
9 insurance and the policy questions regarding discrimination, implying the  
10 non-discrimination of claim 7.

11 • Claims 8 and 9 recite multiple values from the bioinformatic data, which the  
12 various tests described by Holden would require, and such data also  
13 indicating a change in risk, which Holden's examples describe.

14 • Claim 22 requires competitive transactions and insurance transactions are  
15 known to be competitive.

16 • One of ordinary skill would have considered the transactional considerations  
17 of Asch after considering Holden because of Asch's description of the  
18 commercial policy implications of the technology employed by Holden, and  
19 found it obvious to combine their teachings.

20 As to claim 5, rejected over Holden and O'Flaherty, O'Flaherty describes the  
21 use of masking to accomplish data hiding (FF & ). One of ordinary skill would  
22 have seen this as an implementation technique for Holden's denial of access to  
23 some portions of data (FF ) and found it obvious combine them by employing  
24 O'Flaherty for its implementation details.

## DECISION

To summarize, our decision is as follows:

- The rejection of claims 1, 5, 7, 8, 11, 12, 21-25, and 27 under 35 U.S.C. § 103(a) as unpatentable over Hoffman and O'Flaherty is not sustained.
- The rejection of claims 2-4, 6, 9, 10, and 28 under 35 U.S.C. § 103(a) as unpatentable over Hoffman, O'Flaherty, and Beecham is not sustained.
- The rejection of claim 26 under 35 U.S.C. § 103(a) as unpatentable over Hoffman, O'Flaherty, Beecham, and Rigault is not sustained.
- The following new grounds of rejection are entered pursuant to 37 C.F.R. § 41.50(b).

- Independent claims 1, 27, and 28 are rejected under 35 U.S.C. § 102(e) as anticipated by Holden.
- Claims 10-12, 21, and 23-26 are rejected under 35 U.S.C. § 103(a) as unpatentable over Holden.
- Claims 2-4, 6-9, and 22 are rejected under 35 U.S.C. § 103(a) as unpatentable over Holden and Asch.
- Claim 5 is rejected under 35 U.S.C. § 103(a) as unpatentable over Holden and O'Flaherty.

19 No time period for taking any subsequent action in connection with this appeal  
20 may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

REVERSED

41.50(b)

1

2JRG

3

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8